

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

SYNTHES (U.S.A.),	)	
	)	
Plaintiff,	)	
	)	C.A. No. _____
v.	)	
	)	<b>DEMAND FOR JURY TRIAL</b>
SPINAL KINETICS, INC.,	)	
	)	
Defendant.	)	

**COMPLAINT**

Plaintiff, Synthes (U.S.A.) (“Synthes”), for and as its complaint in this patent infringement action, alleges and avers against Defendant, Spinal Kinetics, Inc. (“Spinal Kinetics”), and hereby makes a jury demand, as follows:

**NATURE OF THE ACTION**

1. This claim for patent infringement arises under the laws of the United States of America, 35 U.S.C. §§ 100-307.
2. This patent claim is directed to an intervertebral implant for implantation between vertebrae of the spine.
3. By making, using, selling and/or offering to sell an intervertebral implant that infringes Synthes’ patent rights, Spinal Kinetics is depriving Synthes of the exclusive right to use and profit from its inventions.

### **PARTIES**

4. Synthes is a Pennsylvania partnership having its principal place of business at 1302 Wrights Lane East, West Chester, Pennsylvania 19380, in Chester County. Synthes designs, develops, manufactures and markets intervertebral implants.

5. On information and belief, Spinal Kinetics is a Delaware corporation, with a principal place of business at 595 N. Pastoria Avenue, Sunnyvale, California 94085. Among its business activities, Spinal Kinetics manufactures and sells intervertebral implants including, but not limited to, the M6 intervertebral implant.

### **JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction over this action pursuant to 35 U.S.C. § 271 and 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over Spinal Kinetics because it is formed under the laws of the State of Delaware and because, on information and belief, it transacts substantial business within the State of Delaware.

8. Venue is proper in this jurisdiction, pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b), because Spinal Kinetics resides in this district and is subject to personal jurisdiction in this district.

### **BACKGROUND FACTS**

9. United States Patent No. 7,429,270 (“the ‘270 patent”) was duly and lawfully issued by the United States Patent & Trademark Office on September 30, 2008, and is entitled “Intervertebral Implant.” Synthes is the assignee of the ‘270 patent, and holds all substantial rights thereunder, including the right to sue in its own name. A copy of the ‘270 patent is attached hereto as Exhibit A.

10. On information and belief, Spinal Kinetics has made, used, offered for sale and/or sold intervertebral implants within the United States, including the M6 intervertebral implant.

**COUNT ONE**

**Patent Infringement, Inducement to Infringe and/or Contributory Infringement**

11. Synthes repeats each and every allegation set forth in paragraphs 1-10, as if set forth herein.

12. By making, using, offering to sell and/or selling intervertebral implants, including, but not limited to, the M6 intervertebral implant, Spinal Kinetics has infringed the '270 patent, either directly, by inducement or by contributory infringement. These activities by Spinal Kinetics result in an infringement of the '270 patent pursuant to 35 U.S.C. § 271.

13. Spinal Kinetics' infringement of the '270 patent has been undertaken knowingly and its continued infringement of the '270 patent is willful.

14. Spinal Kinetics' infringement has damaged Synthes.

15. Spinal Kinetics' continued infringement of the '270 patent, and the infringement by those acting in concert with Spinal Kinetics, will cause irreparable injury to Synthes unless said infringing activities are enjoined, preliminarily and/or permanently.

**PRAYER FOR RELIEF**

WHEREFORE, Synthes respectfully requests the following relief:

- a. a judgment that Spinal Kinetics has infringed the '270 patent;
- b. that Synthes be awarded its damages, with interest, pursuant to 35 U.S.C. § 284, and any other applicable statute;
- c. that this case be declared to be exceptional under 35 U.S.C. § 285, and any other applicable statute;

d. that Synthes be awarded enhanced damages, its costs and reasonable attorneys' fees, pursuant to 35 U.S.C. §§ 284 and 285, and any other applicable statute;

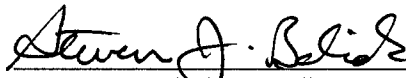
e. that Spinal Kinetics, and those acting in concert with Spinal Kinetics, be enjoined from infringing the '270 patent pursuant to 35 U.S.C. § 271, and any other applicable statute; and

f. that Synthes be awarded such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Synthes hereby respectfully requests trial by jury of all issues so triable.

ASHBY & GEDDES

  
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Dated: November 12, 2008